

# Sumter City-County Board of Appeals

July 14, 2010

## BOA-10-15, 406 Miller Rd. (City)

### **I. THE REQUEST**

**Applicant:** Mike Compton

**Status of the Applicant:** Property Owner

**Request:** Request for a six (6) month time extension to comply with the landscape and parking lot standards as required by Article 8, Section D: Landscaping Standards and Article 8, Section J: Parking & Design Regulations to allow a new business to open prior to site upgrades.

**Location:** 406 Miller Rd.

**Present Use/Zoning:** Vacant Building/General Commercial, Highway Corridor Protection District (GC/HCPD)

**Tax Map Reference:** 229-16-04-002

### **II. BACKGROUND**

The applicant, Mike Compton, is requesting a six (6) month extension to comply with the parking lot and landscaping retro-fit requirements for a proposed used car dealership to be located at 406 Miller Rd. 406 Miller Rd. is the former site of Gallery 406, an interior design firm. The structure has been vacant since the previous tenant moved in September 2009. The applicant is asking for a time extension to meet the site development requirements in order to see whether the proposed tenant will still be in operation after the six (6) month period.

*Section 1.t.2. of the Zoning Ordinance states, “No building, other structure, or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Certificate of Occupancy, certifying compliance with this Ordinance, has been issued by the Zoning Administrator... No Certificate of Occupancy shall be issued where such use is in violation of the provisions of this Ordinance, or of any other applicable law or regulations.”*

Because the structure has been vacant for more than six (6) months, under Section 6.e.1, 6.g.1 and 8.d.11 the parking lot, landscaping, and bufferyards must be brought up to current code. It should be noted that when the site does not meet current development standards related to parking, landscaping and buffering a site is considered to be nonconforming. This means that in order for the Zoning Administrator to approve the business license for the proposed tenant without making necessary site upgrades first, a variance must be granted by the Board of Appeals to allow the time extension to comply with site development standards.

The building is +/-840 sq. ft. in size. Based on the proposed use as a car dealership, this site is required to have 1 parking space for every 350 sq. ft. of gross floor area. Based on the building size, the site must have 2 regular parking spaces and one handicap van accessible space. Submitted plans show the required spaces can be accommodated on-site. The applicant has submitted a site plan proposal that shows retrofitting site curbing and landscaping that addresses all Ordinance requirements. A copy of the proposed plan has been attached to this report. It is his intent to implement the proposal at the expiration of the six months.

### *Existing Conditions*

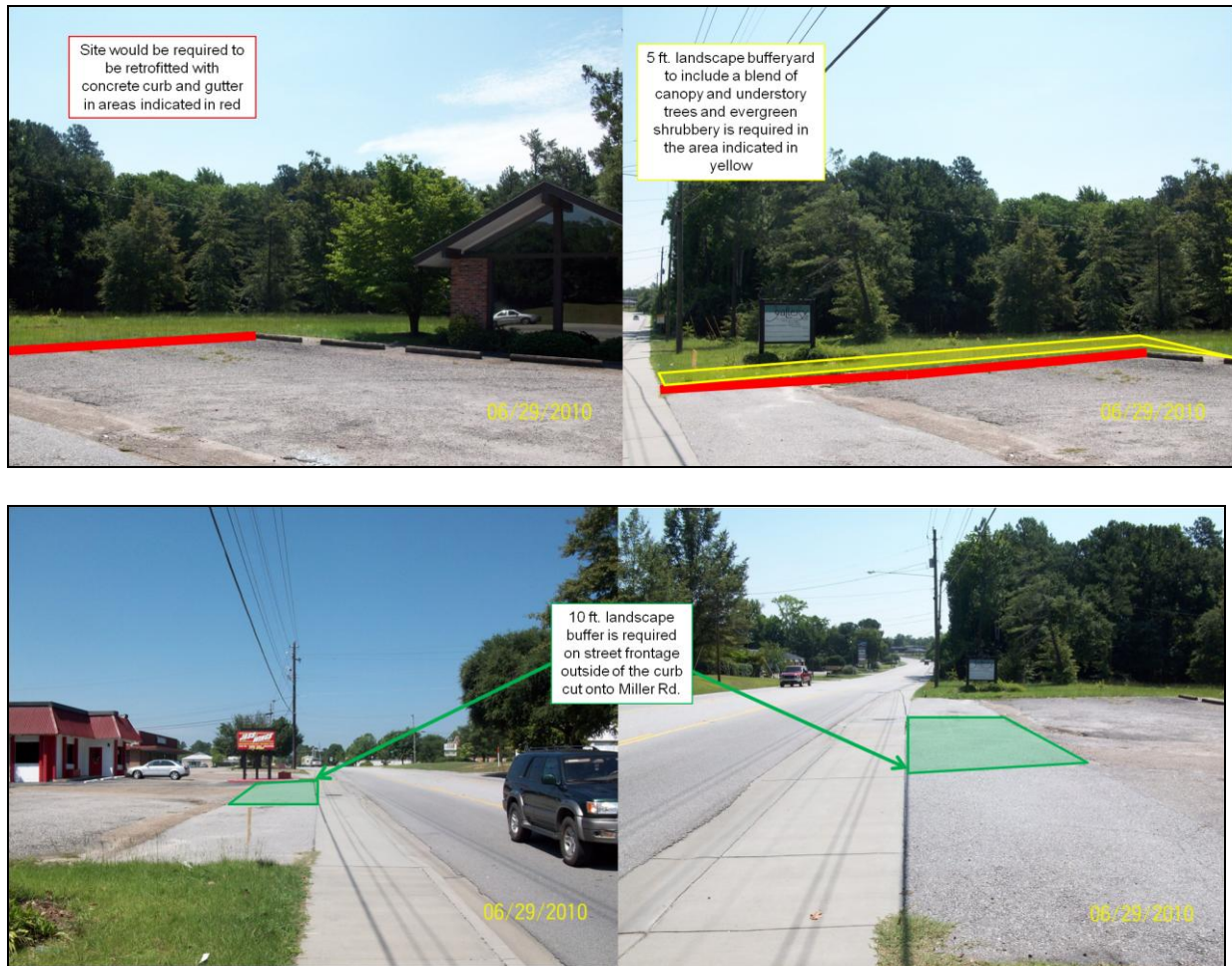
406 Miller Rd. is located on a +/- 2.64 acre parcel. As shown in the aerial photograph to the right, the property is the site of two separate buildings—401 Miller Rd. and 406 Miller Rd. Currently 401 Miller Rd. is the site of an active business.

The entire parcel is non-conforming with respect to parking lot development standards, landscaping and bufferyard requirements. Site development initially occurred between 1967 and 1969, prior to the current Zoning Ordinance. In particular, the paved parking areas lack concrete curb and gutter and portions of the pavement have begun to be overtaken by vegetation. The following photographs show the existing conditions on the property.



*Pictured above left: 406 Miller Rd.; note that there are foundation plantings around the base of the building.*





The parking lot must be retrofitted with concrete curb and gutter to comply with Section 8.j.3.b of the City Zoning Ordinance which states: ***“Surfacing, Drainage and Maintenance: Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. Parking lots shall be surfaced with asphalt, concrete, or other surfaces approved by the Sumter City-County Planning commission. Off street parking lots shall include concrete curbs and gutters, maintained in a clean, orderly and dust-free condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies...”***

As per Article 8, Section D: Landscaping Standards and Article 8, Section 8.j.3 and Exhibit 23, the property must be retrofitted provide 2 regular and one handicap van accessible parking spaces with concrete curb and gutter and must be retrofitted to include the following landscaped areas:

- 10 foot-wide bufferyard located out of the public ROW between the sidewalk and Miller Rd. outside of the established curb-cut;
- 5 foot-wide bufferyard along the side of the parking lot
- Curb and gutter at edge of asphalt area to the front of the building
- Service area for garbage collection and utilities shall be screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two.

- Plant materials used for screening shall be of sufficiently large and planted in such a fashion that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons.
- Plantings shall be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.
- All plantings shall be installed according to acceptable horticultural standards.
- Deciduous street trees must have straight trunks and be of two-inch (2”) caliper at time of planting. They must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.
- A site landscaping plan must be submitted and approved by staff at the Sumter City-County Planning Department because of the property’s location within the Highway Corridor Protection District (HCPD).

### **III. THE REQUEST**

The applicant is seeking a six (6) month time extension on meeting the parking lot curb and gutter retro-fitting requirement and landscape/bufferyard requirements to allow the proposed tenant to occupy the structure prior to site upgrades.

In order for the Board of Appeals to grant a variance from the Zoning Ordinance, the proposed variance request must meet all four-parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

### **IV. FOUR-PART TEST**

#### **1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

- The property is an existing building that is located in the Highway Design Corridor. The site was developed in the 1960s prior to any established development regulations, and is non-conforming with respect to landscaping, bufferyard and curbing standards. Development in the vicinity of the site is a blend of residential, single structure multi-tenant commercial sites, and institutional. Much of the adjacent commercial development occurred after the 1980s and was established under the previous and/or current development standards. Some of the adjacent parcels do not meet current bufferyard and parking lot landscaping standards; however, they do have paved parking with concrete curb and gutter. These locations may or may not be non-conforming with respect to landscaping but they have remained in continuous operation.

**2. *These conditions do not generally apply to other property in the vicinity.***

These conditions *do not* generally apply to other properties in the vicinity based on the following:

- On properties with single structures housing two or more tenant spaces, business activity is considered to be active as long as at least one tenant space remains occupied. In those instances, a site maintains its grandfathered non-conforming status so long as the general number of required parking spaces does not increase more than 10% of what is available on the property. In situations where a parcel of land has more than one structure with clearly defined access, service, and parking areas for each building, said building and associated parking and landscape areas are dealt with as if it were on an individual parcel of land. At 406 Miller Rd., there are two separate structures with clearly defined service, parking and access areas for each structure; this is a unique commercial property along the Miller Rd. corridor in that partial retrofitting of the property is necessary.

**3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Absolute application of the ordinance requirement ***will not prohibit*** or unreasonably restrict the utilization of this property due to the following:

- Parking and landscaping are a requirement of the ordinance and therefore must be complied with. In situations where the property or existing site development conditions clearly prevent compliance with the regulations due to limitations in area, building location, lot width/depth or topography make it physically impossible to meet development standards, then it is reasonable to state that application of the ordinance effectively prohibits or unreasonably restricts utilization of the property. In this instance, the applicant has shown that site development requirements can be met.

**4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***

- Granting a time extension to meet development standards at this location will not be of substantial detriment to adjacent property or to the public good so long as the site upgrades are implemented—therein lays the issue. While the applicant has presented a development plan that addresses the intent of the Zoning Ordinance, Planning Staff believes the request only to be reasonable if the implementation is phased over the six-month period as opposed to being started at the end of six-months. Some, if not all of the improvements should be implemented prior to the opening of the business.

## **V. STAFF RECOMMENDATION**

Based on the fact that the requirements of the Four-Part Test have not been met, Staff recommends denial of BOA-10-13. Granting a six (6) month extension to bring a site into compliance, while allowing a business to operate, with no site upgrades prior to occupancy does not meet the intent of the Ordinance. Historically the Board has granted variances from development standards based on true site related hardship, however in each of these instances; the sites were required to be retrofitted prior to issuance of a zoning occupancy permit.

A more rational approach to site retrofitting at this location would be the implementation of a phased development plan where each portion of the required site upgrades was made over a period of time with the first phase, i.e. installation of landscaping, installed prior to zoning occupancy permit, with total completion of site upgrades by the end of the six (6) month period.

## **VI. DRAFT MOTIONS for BOA-10-13**

- A.** I move that the Sumter Board of Appeals deny BOA-10-15 subject to the findings of fact and conclusions contained in the draft order dated July 14, 2010 attached as Exhibit 1.
- B.** I move that the Sumter Board of Appeals approve BOA-10-15 on the following findings of fact and conclusions:
- C.** I move that the Sumter Board of Appeals enter an alternate motion for BOA-10-15.

## **VII. ZONING BOARD OF APPEALS – July 14, 2010**

The Sumter City-County Zoning Board of Appeals at its meeting on July 14, 2010 voted to defer for 6 months the following:

- 10' bufferyard requirement at the front of the building
- Curb & gutter at the edge of the asphalt at the front of the building
- Any other curb & guttering requirements (except re-stripping)

All landscaping as shown on the diagram submitted by Jones and VanPatten (except 10' front bufferyard) shall be done prior to the issuance of the business license. All other requirements must be met at the end of the 6 months.

**Exhibit 1**  
**Order on Variance Application**  
**Sumter Board of Appeals**

**BOA-10-15, 406 Miller Rd. (City)**  
**July 14, 2010**

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Date Filed: July 14, 2010

Permit Case No. BOA-10-15

The Board of Zoning Appeals held a public hearing on Wednesday, July 14, 2010 to consider the request of Mike Compton, 3160 Quandry Rd., Sumter, SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property is an existing building that is located in the Highway Design Corridor. Site was developed in the 1960s prior to any established development regulations, and is non-conforming with respect to landscape, bufferyard and curbing standards. Development in the vicinity of the site is a blending of residential, single structure multi-tenant commercial sites, and institutional. Much of the adjacent commercial development occurred after the 1980s and was established under the previous and/or current development standards. Some of the adjacent parcels do not meet current bufferyard and parking lot landscaping standards however they do have paved parking with concrete curb and gutter. These locations may or may not be non-conforming with respect to landscaping however they have remained in continuous operation.

2. The Board concludes that these conditions ☐ **do** - ☒ **do not** generally apply to other property in the vicinity based on the following findings of fact:

On properties with single structures housing two or more tenant spaces, business activity is considered to be active as long as at least one tenant space remains occupied. In those instances, a site maintains its grandfathered non-conforming status so long as the general number of required parking spaces does not increase more than 10% of what is available on the property. In situations where a parcel of land has more than one structure with clearly defined access, service, and parking areas for each building, said building and associated parking and landscape areas are dealt with as if it were on an individual parcel of land. At 406 Miller Rd., there are two separate structures with clearly defined service, parking and access areas for each structure; this is a unique commercial property along the Miller Rd. corridor in that partial retrofitting of the property is necessary.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☒ **would** - ☐ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

The parcel has more than one business operating on it and the other building on the property has been in continuous use over the past 6 months.

4. The Board concludes that authorization of the variance ☐ **will** - ☒ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☒ **will not** be harmed by the granting of the variance based on the following findings of fact:

Granting a time extension to meet development standards at this location will not be of substantial detriment to adjacent property or to the public good. The applicant has presented a development plan that addresses the intent of the Zoning Ordinance, the request is reasonable with the implementation phased over the six-month period with installation of landscaping, except for the 10 ft. buffer strip at the street frontage, prior to the business opening with all other requirements being met at the end of 6 months.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ **DENIED** - ☒ **GRANTED**, **subject to the following conditions:** The following will be deferred for 6 months:

- 10' bufferyard requirement at the front of the building
- Curb & gutter at the edge of the asphalt at the front of the building
- Any other curb & guttering requirements (except re-stripping)

All landscaping as shown on the diagram submitted by Jones and VanPatten (except 10' front bufferyard) shall be done prior to the issuance of the business license. All other requirements must be met 6 months from the date of the business license.

Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**